

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1992-013669

02/25/2005

HON. ROSA MROZ

CLERK OF THE COURT
C. Vigil
Deputy

IN RE THE MARRIAGE OF
DEBBORA LYNN SCHMITT

FILED: 02/28/2005

DANIEL INSERRA

AND

PERRY BRYAN SCHMITT

PERRY BRYAN SCHMITT
19221 N 45TH DR
GLENDALE AZ 85308

DAVID M. MCPHEE
8160 N. HAYDEN ROAD
SUITE J-112
SCOTTSDALE AZ 85258

ORDER OF APPOINTMENT OF FAMILY COURT ADVISOR

(1) APPOINTMENT OF FAMILY COURT ADVISOR

The Court has considered Respondent's Motion for the Appointment of a Family Court Advisor. The Court finds that the issues involving parenting plans involve complex family dynamics problems. These issues often require speedy resolution and involve the consideration of mental health and economic issues crucial to the protection of the best interests of the minor child/children.

IT IS ORDERED pursuant to A.R.S. Sections 25-405 and 25-410 appointing David McPhee as the Family Court Advisor in this case, with authority as provided in this Order.

The Family Court Advisor is appointed for a term of 12 months subject to (1) reappointment at the expiration thereof upon the Court's own motion, the request of the Family Court Advisor or motion of either party; or (2) earlier removal by court order based upon motion showing good cause, stipulation of the parties, or resignation by the Family Court Advisor.

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(2) FAMILY COURT ADVISOR AUTHORITY

IT IS FURTHER ORDERED that the Family Court Advisor is authorized, subject to the provisions of paragraph 6 of this Order, to make recommendations regarding implementation, clarification, and enforcement of any temporary or permanent custody or visitation/access orders of the Court; provided, however, the Family Court Advisor is not authorized, unless specifically ordered by the Court, to investigate or make recommendations regarding substantial changes to existing custody orders, such as modification of legal custody, relocation of the child/children, alteration of existing access schedules which substantially changes the access time of either parent.

The scope of the authority of the Family Court Advisor shall be:

(a) to make recommendations to the Court regarding all current and future disputes arising under or as a result of the custody or visitation/access order as to the minor child/children, including by way of example only, disputes over: schooling, daycare or babysitting, medical and/or psychological care, activities of the child/children, discipline, daily routine, transportation, visitation exchanges, vacation and holiday scheduling or any other "parenting-type" issues, and any issue as the Court may from time to time direct; and/or

(b) resolve/decide any issue within the scope of authority of the Family Court Advisor by any dispute-resolution method which may be agreed to by the parties.

The Family Court Advisor shall formulate recommendations based upon what is in the child/children's best interest.

The Family Court Advisor may interview all members of the immediate or extended family of both parties at the discretion of the Family Court Advisor.

The Family Court Advisor may interview and request the participation of any and all persons who the Family Court Advisor deems to have relevant information or to be useful participants.

The Family Court Advisor may request that the Court order the parties and/or child/children to participate in adjunct services, to be provided by third parties, including but not limited to physical or psychological examinations and assessments and psychotherapy, alcohol and drug monitoring/testing. The Court shall allocate between the parties the cost of any adjunct service.

Time Sensitive Issue Authority and Procedure:

The Court recognizes that occasionally circumstances and parenting issues arise in the normal daily functioning of the family, in which time sensitive decisions must be made to assist

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the family and ensure consistency, continuity and speedy dispute resolution for the welfare of the child/children and parents. Such circumstances sometimes require immediate action and resolution because of the short-term nature of the issue and potential for disruption of the child/children's life and harm to the child/children's best interests, both short term and long term, if the issue or dispute is not resolved immediately.

In such an instance, and within the purview of the scope of authority of the Family Court Advisor, the Family Court Advisor may communicate with the assigned judge in writing with a copy of the parents (or counsel, if represented), his or her recommendations to the Court, and if the Court determines that interim orders may be entered sufficient to resolve the immediate dispute, and if the Court makes such an interim order, the Family Court Advisor has authority to immediately communicate the same to the parties on the Court's behalf. Thereafter, the procedures set forth in Paragraph 6(c) hereof shall apply.

Provided, however, should the assigned judge not be immediately available for conference or hearing, the Family Court Advisor has the authority to make a binding decision, applicable only for each such short-term, emergent, non-recurring situation or dispute, which would be made without prejudice and without precedent as to any future action or procedure for any other dispute.

For purposes of example only, and not by limitation, such time-sensitive, emergent situations might be:

Temporarily changing exchange day, time or place;

Attendance at or participation in a special event or occasion by the child or a parent;

Responsibility for care of a sick child or accompaniment to medical treatment;

A special non-recurring need of the child or parent.

The Family Court Advisor report shall document all substantive issues addressed and the basis for the recommendations made to the Court.

The foregoing authority and procedure is implemented as an exception to the procedures set forth in Section (5) of this Order, based upon the best interests of the child/children covered by this Order.

(3) **AUTHORITY OF FAMILY COURT ADVISOR RE: THE CHILDREN**

The Family Court Advisor shall have the following rights and authority with regard to the minor child/children:

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- (a) Reasonable access to the child/children with reasonable notice;
- (b) Reasonable notice of any and all judicial proceedings including requests for any examination affecting the child/children, and shall be provided copies of all orders and pleadings filed in this case;
- (c) The Family Court Advisor shall have access to:
 - [i] all therapists of the child/children, parents and other parties;
 - [ii] all school and medical records of the child/children, and parents;
 - [iii] any and all mental health records including but not limited to psychological testings or evaluations performed on the child/children or the parents;
 - [iv] any and all teachers/child care provider for the child/children.
- (d) The Family Court Advisor is authorized to interview the parties or child/children in any combination, whether initiated by the Family Court Advisor or either party. If either party contacts in writing the Family Court Advisor, the documentation or writing given to the Family Court Advisor shall be provided to the opposing party and counsel (if any) simultaneous to providing it to the Family Court Advisor.
- (e) At the request of the Family Court Advisor, each party shall execute any and all releases or consents necessary so as to authorize the Family Court Advisor's access to the information contemplated herein above.

(4) CONFIDENTIALITY

There is no confidentiality relating to the parties' communications with/to the Family Court Advisor or concerning the Family Court Advisor's activities or recommendations.

(5) PROCEDURE

IT IS FURTHER ORDERED that proceedings before the Family Court Advisor shall be conducted in accordance with the following procedures:

- (a) Either party, the Family Court Advisor or the Court may initiate proceedings before the Family Court Advisor. Both parties shall participate in the dispute resolution processes defined by the Family Court Advisor.

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(b) Once proceedings are initiated under (a) above, the Family Court Advisor shall determine, at his/her discretion, the sequence and frequency of meetings and who shall participate in any sessions/meetings. Notice may be made by mail to the last known address supplied to the Court or, if circumstances demand, the Family Court Advisor may notify the parties orally and make a notation of the date and time of the notification. The Family Court Advisor shall proceed with all reasonable diligence. If a party fails to appear at a time and place appointed, the Family Court Advisor may proceed at that time, or at the Family Court Advisor's discretion, continue the meeting to a future day with notice to the absent party.

(c) If either party fails to participate as requested by the Family Court Advisor, then in addition to all other remedies available under law, the Family Court Advisor may proceed and make recommendations regarding the dispute, if necessary, without the participation of such party.

(d) The Family Court Advisor is not required to make a record of the proceedings, however, any party, at their option and expense and upon reasonable notice, may make a record of any information offered. The Family Court Advisor, may, in his or her discretion, tape record or video record or otherwise preserve any information presented to the Family Court Advisor.

(e) The Family Court Advisor or the parties may request that the Court procure the attendance of witnesses for any proceedings conducted by the Family Court Advisor.

(f) The Family Court Advisor may request, with notice to the parties, the Court to issue subpoenas to require the appearance of any person within the jurisdiction of this Court and/or require the production of any documents within the jurisdiction of this Court or under the control of either party or their agents.

(g) If either or both parties are represented by counsel, there shall be no ex parte communications between the Family Court Advisor and counsel except if such communication relates solely to scheduling matters.

(h) Additional rules applicable to the Family Court Advisor may be ordered by the Court from time to time.

(6) RECOMMENDATIONS AND OBJECTIONS

(a) The Family Court Advisor may, in his or her discretion, submit draft recommendations to the parties or their counsel for the purpose of receiving their suggestions. The Family Court Advisor may, at his or her discretion, require the parties or their counsel to submit proposed draft recommendations to the Family Court Advisor.

(b) All final recommendations shall be submitted in report format to the assigned division/judge and each party and counsel, if represented.

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(c) The assigned division/judge shall review the recommendations from the Family Court Advisor, and thereafter, may enter an order/minute entry which,

(i) adopts or modifies the recommendations as an interim order of the Court, effective immediately, based upon the finding that circumstances exist making the immediate entry of the order necessary, which order shall become a final order on the 25th day following the date of filing of the order, but which order shall not become a final order until so ordered by the Court if an interested party has filed a written objection to the order within 25 days after the date of filing of the order;

(ii) adopts or modifies the recommendations, but which order shall not become effective until the 25th day following the date of the order, provided that no written objection to the order has been filed;

(iii) does not adopt or modify the recommendation and

(a) makes other orders;

(b) refers the matter back to the Family Court Advisor for further proceedings;

(c) sets Evidentiary Hearing on the matter.

(d) The original report, recommendation and order/minute entry will be routed to the legal file and copies mailed to all parties by the Clerk.

(e) If an objection is filed, the Court will resolve the same by directing a response to the objection from the other party, holding a hearing or taking such other measures as are appropriate to the matter at issue. An objection does not stay an interim order unless the Court orders otherwise.

(7) APPEARANCES

(a) The Family Court Advisor may appear and shall be available to testify at any court hearing upon reasonable notice to the Family Court Advisor, the Court and the opposing party regarding any issue addressed by the Family Court Advisor.

(b) If transcripts, tape recordings or videotapes have been made of any portions of the Family Court Advisor proceedings, they shall be submitted to the Court.

(8) DISCLOSURES

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The parties shall keep the Family Court Advisor advised of their and the child/children's addresses, telephone numbers for home, work and school, mailing address if different than the living address, as well as any other pertinent information. This information shall be immediately communicated in writing to the Family Court Advisor.

(9) IMMUNITY

The Family Court Advisor has immunity in accordance with Arizona law as to all acts undertaken pursuant to and consistent with the appointment order of the court.

Any alleged impropriety or unethical conduct by the Family Court Advisor shall be brought to the attention of the Court in writing.

(10) FEES

IT IS FURTHER ORDERED the Petitioner shall be responsible for and pay 50% of the Family Court Advisor's fees, and the Respondent shall be responsible for and pay 50 % of the Family Court Advisor's fees, until further order of the Court. All fees shall be paid in advance as determined by the Family Court Advisor. The Family Court Advisor shall keep accurate records of services rendered and fees paid by each party.

IT IS FURTHER ORDERED that should the Family Court Advisor determine that one of the parties is using his/her services unnecessarily and is thereby causing greater expense for the other party as a result thereof, the Family Court Advisor may recommend to the Court a different allocation for payment of fees.

IT IS FURTHER ORDERED that should the Family Court Advisor find any party is acting in bad faith, and/or not complying with the Court's orders, the Family Court Advisor may recommend that the party acting in bad faith pay or reimburse the other party's costs of services provided by the Family Court Advisor necessitated by the party acting in bad faith, and the Family Court Advisor may recommend additional sanctions which may include modifications of access and/or contempt proceedings.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.